ATTORNEY GENERAL'S REPORT.

DEPARTMENT OF JUSTICE,
RICHMOND, February 26th, 1862.

To the President:

SIR:—I have the honor to submit the following report from this Department:

As the present Congress is the first which has assembled under the Permanent Constitution, it may be useful to make a concise statement of the duties assigned to this Department.

The duties expressly prescribed by law are—

1. To prosecute and conduct all suits in the Supreme Court, in which the Confederate States shall be concerned.

2. To give advice and opinion upon questions of law, when required by the President, or requested by the Head of a Department, touching a matter that concerns his Department, on a subject before it.

3. The organization of the Courts of Justice.

4. The supervision of the accounts of Marshals, Clerks, and Officers of all the Courts of the Confederate States, and of all claims against the Confederate States.

5. The custody of the Official Bonds of all Clerks and Marshals of the Confederate Courts.

6. To provide suitable accommodations for holding the Courts, and to furnish the necessary books for Records and Dockets.

7. To represent the Government in all cases before the Board of Commissioners under the Sequestration Act.

8. To prescribe uniform rules of proceeding under the Sequestration Act; but the Act was so amended at the last session of the Provisional Congress, as to discharge the De-

partment from that duty, and to supersede the rules which had been prescribed.

9. To receive and file claims for *money* against the Confederate States, for the proof and payment of which no mode is provided by existing laws: to prescribe the manner of taking testimony to establish them; to decide upon the claims and report those disallowed, as well as those allowed, to the Congress in session at the time of the hearing, or, if not in session, then to the next session thereafter.

10. The same duties in relation to claims of citizens of the Confederate States against the United States, except that no decision or report is to be made until the end of the existing war.

11. The supervision of the Bureau of Printing, and the hearing of appeals from the decision of the Superintendent thereof, in all cases where he shall refuse to receive work, or shall refuse to allow any account rendered.

12. The custody of the laws, and their publication in two gazettes, at the Capital of the Confederate States; the selection of such as are of a public nature and require early publication, and their insertion in one public gazette at the seat of government in each State; the preparation of indexes and marginal notes to all the laws and treaties, and their publication and binding in book form, and the care and distribution of the volumes, according to the Act of Congress.

13. The supervision of the Bureau of Patents, the signing of Patents, and the hearing of appeals from that Bureau.

Besides these statutory duties, there are others which are implied: as the giving to the President, or to Congress, information upon facts within the scope of the Department; the making of estimates for salaries and contingent expenses of the Department, including the salaries of Judges and Attorneys and the expenses of Courts; making estimates for the expenses of printing for Congress and for the several Departments; making requisitions upon the Secretary

of the Treasury for the several amounts as they are needed in payment; the custody of applications for pardon, the examination thereof, and the drawing and recording of pardons when granted, &c.

By the Provisional Constitution, and by the Act of the 16th March, 1861, each State constituted a Judicial District. Subsequently, the Provisional Constitution was so amended as to declare that each State shall constitute a District, until otherwise enacted by law, and to allow a Judge to each District. In accordance with the amendment, Texas and Virginia were each divided into two Districts, with a Judge, Attorney and Marshal for each District. Arkansas was divided into two Districts, with one Judge, two Attorneys and two Marshals. Tennessee constituted but one District until the passage of the act of the 12th December, 1861, by which the State was divided into three Districts, with one Judge, three Attorneys and three Marshals. The Courts in every District were fully organized under the Provisional Government, except in the States of Missouri and Kentucky, and in the State of Tennessee, after the Act above mentioned. That Act ousted the Attorney and Marshal, by omitting to assign either to a particular District. Nominations were subsequently made for Marshals and Attorneys of the three Districts created by the Act, but this Department is not officially informed what action was taken upon them by the Provisional Congress.

The Courts in the Territory of Arizona remain to be organized; and the Courts also in the Indian country—but the latter must await the ratification of amendments made to the Treaties by the Provisional Congress. Under the laws of the United States, certain Indian Territory, west of the State of Arkansas, was included in the Western Judicial District of that State, and by the Act of the Provisional Congress of the 21st May, 1861, the limits and boundaries of that District were declared to be the same. It is clear, that by the secession of the State of Arkansas, and her subsequent admission as one of the Confederate States, no ju-

risdiction was given to the Confederate Government beyond the limits of that State. I know of no ground upon which to rest such extra territorial jurisdiction, except a Treaty with the Indians, and my opinion, therefore, is, that the Act of the 21st May is inoperative, so far as the Indian Territory is involved, and hence my conclusion, that no Court can be organized over such Territory until after the ratification of the amendments to the Treaties. The necessary legislation was made, however, by the Provisional Congress, so that nothing will remain to be done, after the ratification, but the appointment and qualification of the Officers of Court.

The Supreme Court remains to be organized, and some amendment of the law, in relation to appeals and writs of error to that Court, seems to be required. In relation to cases "pending" in the Supreme Court of the United States, at the passage of the Acts of the 16th March and 21st May, 1861, a motion to dismiss an appeal or writ of error is now required, before such case can be transferred to the Supreme Court of the Confederate States. Such a motion cannot now be made by a citizen of the Confederate States, and the law does not, therefore, meet the exigency of the case. No express provision is made for cases which were pending in the Supreme Court of the United States, at the date of the secession of a State, and which had been decided by that Court prior to the Act of the 16th March, 1861, nor for cases decided by the Supreme Court of a State prior to secession, nor for cases decided by such Supreme Court subsequent thereto; except the cases specified in sections 45 and 46 of the Act. The 42d section of that Act declares, by way of proviso, "That appeals or writs of error, in any case, to the Supreme Court of this Confederacy, from existing judgments and decrees, may be taken under the same rules and regulations required by the laws of the United States, for appeals or writs of error to the Supreme Court of the United States, existing at the time the said judgments or decrees were rendered." That provision

would clearly and sufficiently have covered all cases, except *those which were not in judgment or decree*, but for two reasons: 1. Because section 48 of the said Act provides specially for cases "now pending in the Supreme Court of the United States," and subjects them to a condition precedent. 2. Because the prior part of the section 42 relates only to judgments and decrees of the District Courts, and leaves the proviso open, at least, to the argument that it applies only to the judgments and decrees of such courts. I would suggest, therefore, that the law be amended in these several particulars.

The Act of the 31st July, 1861, repeals the Act of the 16th March, 1861, so far as it directs the holding of a Supreme Court under the Provisional Constitution, and declares that none shall be held until the Court shall be organized under the Permanent Constitution. It prescribes that "all writs of error and appeals taken or prosecuted from the *District Courts* of the Confederate States prior to the organization of the Supreme Court, under the Permanent Constitution, shall be made returnable on the second Monday of the first term to be held by the Supreme Court under the Permanent Constitution." The Act is prospective only in its operation, and relates only to appeals or writs of error from the *District Courts*. As the Supreme Court will, doubtless, be organized in a short time, it seems unnecsssary to do more than to provide for cases in which appeals and writs of error were taken from the District Courts, or from the Supreme Court of a State, returnable to the Supreme Court of the Confederate States, which, under the Act of the 16th March last, was to have been held on the first Monday of January, 1862. An amendment making such appeals and writs of error returnable, by continuance, on the second Monday of the first term of the Supreme Court, would probably meet the whole difficulty.

By the Act of the 21st May, 1861, one time is prescribed within which appeals or writs of error may be taken in cer-

tain cases, and a different limitation made in another class of cases. It seems to me that, in consideration of the condition of the country, the same time should be allowed in all cases decided prior to the organization of the Supreme Court, when an appeal or a writ of error is allowed at all, and that twelve months from the organization of the Supreme Court would be a reasonable limitation.

Should a Court of Claims be established, or should the Board of Commissioners under the Sequestration Act be continued, the Attorney General should be authorized to employ an Attorney, when deemed necessary, to attend to the taking of testimony. The Department, as at present organized, will be found inadequate to the performance of such duties, as neither the Attorney General nor his Assistant can be absent from the Department, and at points remote from the Seat of Government, without a failure to discharge other important duties required of them by law.

Legislation is required as to the fees of District Attorneys, Marshals and Clerks of the District Courts. Their fees depend, in some cases, upon one law, and, in other cases, upon another law; and those of Marshals and Clerks sometimes upon the statute of a State, and sometimes upon the United States fee bill of 1853, making it not only very difficult for the officers to state their accounts correctly, but requiring an examination in this Department, and by the Accounting Officers of the Treasury Department, of the laws of the several States regulating such fees—a very uncertain mode, at best, of arriving at just conclusions. Besides, the compensation of Attorneys, Marshals and Clerks is, in many cases, very unremunerative; so much so in regard to Clerks, that it may be doubted whether, under the present law, a competent Clerk, if one at all, will be found in six months, in any District Court. It is understood that fee bills were submitted to the Provisional Congress, and they doubtless remain now amongst the unfinished business of the last session. I think it would be well, in every instance

in which a clerk's fees do not amount to five hundred dollars in a year, that an amount should be paid him out of the Treasury to make that sum.

The duty of the Attorney General, in supervising accounts of officers and courts, and of all claims against the Confederate States, should be more clearly defined.

It would be well, also, perhaps, to fix by law the effect of his opinion, when given according to the requirement of the Act of Congress. There was no law declaring what should be the effect, under the Government of the United States, yet the general practice was to follow it.

The salary of the Assistant Attorney General is less than that of any Assistant Secretary, or of any Head of a Bureau. The discrimination should not be made against him, and I recommend that his salary be increased. The Commissioner of Patents made his report in January last, as required by law, and a copy accompanies this report for more ready reference.

The Superintendent of Public Printing has been unable to get the accounts necessary to the making of his report, but it will be prepared and transmitted in the early part of the ensuing week. Very respectfully, sir,

Your obedient servant,

THOS. BRAGG,

Attorney General.

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